

**UNITED STATES DISTRICT COURT
OF THE DISTRICT OF OREGON
PORTLAND DIVISION**

DONALD E. MILLER and LINDA S.
MILLER,

Plaintiffs,

-vs.-

NO. 20-44

NOTICE OF REMOVAL

(28 U.S.C. § 1441(b) and 1446(a))

AIR & LIQUID SYSTEMS
CORPORATION SUCCESSOR-BY-
MERGER TO BUFFALO PUMPS, a
Pennsylvania corporation;
AGRIPAC, INC., an Oregon corporation;
ARKEMA, INC., a Pennsylvania
Corporation;
ASTENJOHNSON, INC., a Delaware
corporation;
BALTIMORE AIRCOIL COMPANY,
INC., an Ohio corporation;
BAYER CROPSOURCE INC., a New
York corporation;
CBS CORPORATION, F/K/A VIACOM,
INC., SUCCESSOR BY MERGER TO
CBS CORPORATION, F/K/A
WESTINGHOUSE ELECTRIC
CORPORATION, a Pennsylvania
corporation;
CENTURYLINK COMMUNICATIONS,
LLC, a Limited Liability Company
organized in Delaware;
C.H. MURPHY/CLARK-ULLMAN IN.C,

NOTICE OF REMOVAL

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1 an Oregon Corporation;
2 CHEVRON U.S.A. INC., a Delaware
3 Corporation;
4 CLEAVER –BROOKS, INC., a Delaware
5 Corporation;
6 CRANE CO., a Delaware Corporation;
7 CROWN CORK & SEAL COMPANY,
8 INC., a Pennsylvania Corporation;
9 DFI, INC., an Oregon Corporation;
10 EB ARROW, a Limited Liability Company
11 organized in Texas;
12 EXXON MOBIL CORPORATION, a
13 NEW JERSEY corporation;
14 FLUOR CORPORATION,
15 INDIVIDUALLY AND AS SUCCESSOR-
16 IN-INTEREST FOR ECODYNE
17 CORPORATION, a Delaware corporation;
18 GENERAL ELECTRIC COMPANY, a
19 New York corporation;
20 HOLLINGSWORTH & VOSE FIBER
21 CORPORATION, a Delaware Corporation;
22 IMO INDUSTRIES, INC., a Delaware
23 corporation;
24 KAISER GYPSUM COMPANY, INC., a
25 Washington corporation;
THE KROGER CO., an Ohio Corporation,
a Maryland Corporation;
MAR-INDUSTRIAL SALES, INC., an
Oregon corporation;
MCCALL OIL AND CHEMICAL
CORPORATION, a Washington
Corporation;
METALCLAD INSULATION LLC, a
Limited Liability Company organized in
California;
METROPOLITAN LIFE INSURANCE
COMPANY, a New York Corporation;
MINE SAFETY APPLIANCES
COMPANY, a Pennsylvania Corporation;
MUFG UNION BANK, N.A., a bank with
its principal place of business in California;
MUNTERS CORPORATION, a New York
corporation;

1 NORPAC FOODS, INC., an Oregon
 cooperative ;
 2 NORTHWEST NATURAL GAS
 3 COMPANY, an Oregon Corporation ;
 PACIFICA CALAROGA TERRACE LLC,
 4 a Limited Liability Company organized in
 Oregon ;
 5 PENDLETON WOOLEN MILLS, INC.,
 an Oregon Corporation ;
 6 PEPSICO, INC., a North Carolina
 Corporation ;
 7 PORTLAND GENERAL ELECTRIC
 8 COMPANY, an Oregon Corporation ;
 PRECISION CASTPARTS CORP., an
 9 Oregon Corporation ;
 10 SAFEWAY, INC., a Delaware
 Corporation ;
 11 SHELL OIL COMPANY, a Delaware
 Corporation ;
 12 SIMPSON TIMBER COMPANY, a
 Washington Corporation ;
 13 SOLVAY USA INC., a New Jersey
 Corporation ;
 14 SPX COOLING TECHNOLOGIES, INC.,
 15 INDIVIDUALLY AND AS SUCCESSOR
 IN INTERST TO MARLEY COOLING
 16 TOWER COMPANY, a Delaware
 corporation'
 17 THE MARINE GROUP, LLC, a California
 Corporation ;
 18 THUNDERBIRD MOTEL, INC., an
 19 Oregon Corporation ;
 TILLAMOOK CHEESE, INC., an Oregon
 20 corporation ;
 21 TRUITT BROS., INC., an Oregon
 Corporation ;
 22 UNION CARBIDE CORPORATION, a
 New York Corporation ;
 23 WARREN PUMPS, LLC ; a Delaware
 limited company ;
 24 WEST LINN PAPER COMPANY, an
 Oregon Corporation ;
 25 WESTELL, INC., an Illinois Corporation ;
 WEYERHAEUSER COMPANY, a

1 Washington Corporation ;
2 WRKCO, INC., a Georgia Corporation,
3
4 Defendants.

4 TO: THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
5 OREGON AT PORTLAND

6 1. Defendant Kaiser Gypsum Company, Inc. (“Kaiser Gypsum”), is the only remaining
7 defendant in this civil action, originally filed in Multnomah County on February 25, 2019.
8 Pursuant to provisions 28 U.S.C. §§ 1441 and 1446, Kaiser Gypsum hereby remove this action to
9 the United States District Court for the District of Oregon at Portland, which is the federal
10 jurisdiction in which the action is pending.

11 2. Plaintiffs Donald E. Miller and Linda S. Miller (“Plaintiffs”) have resolved their claims
12 against all other defendants that were named in their Complaint except for Kaiser Gypsum, and
13 therefore no other defendants are included in this Notice of Removal.
14

15 3. On January 7, 2020, Kaiser Gypsum was informed by Plaintiffs’ counsel that the two of
16 the remaining three defendants in this case were being voluntarily dismissed, leaving Kaiser
17 Gypsum as the only remaining defendant in this action.¹

18 3. The grounds for removal of this action are as follows:

19 a. Complete diversity exists between the remaining parties:

20
21 i. Defendant Kaiser Gypsum is incorporated in North Carolina and its
22 principal place of business is in Irving, Texas.

23 ii. Plaintiffs are residents of the State of Oregon and currently reside in
24

25 ¹ See **Ex. A** to Declaration of Howard (Terry) Hall in Support of Notice of Removal (“Hall Decl.”), January 7, 2019 email from Plaintiffs’ counsel.

1 Newberg, Oregon.

2 b. Plaintiffs allege Kaiser Gypsum is responsible for personal injuries of Donald
3 Miller. Upon information and belief, more than \$75,000, exclusive of interest and
4 costs, is in controversy in this action.
5

6 4. Removal of this case on the basis of diversity of citizenship is not precluded by the
7 provisions of 28 U.S.C. § 1441(b) because none of the remaining parties in interest properly
8 joined and served as a defendant is a citizen of the State of Oregon.

9 5. This Notice of Removal was timely under 28 U.S.C. § 1446(b) because on
10 December 11, 2019, Plaintiffs' counsel informed all remaining parties and the trial Court that
11 they were voluntarily dismissing the sole remaining Oregon Defendant, Tillamook County
12 Creamery Association.²
13

14 6. If a case is not initially removable, a notice of removal may be filed within 30 days after
15 the defendant's receipt, through service or otherwise, of a copy of an amended pleading, motion,
16 order, or other paper from which it first may be ascertained that the case is one that is or has
17 become removable. 28 U.S.C. § 1446(b)(3).

18 7. This case is removable on the basis of diversity jurisdiction based on Plaintiffs' voluntary
19 dismissal of Tillamook County Creamery Association; as the sole remaining Oregon defendant,
20 within one year of the commencement of the lawsuit. Kaiser Gypsum's Notice of Removal was
21 timely filed within thirty days of when it first ascertaining that the case had become removable
22 on the basis of diversity.
23

24 8. Copies of all the pleadings filed with the Multnomah County Circuit Court prior to this
25

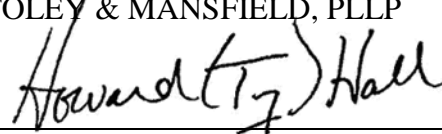
² See **Ex. B** to Hall Decl., December 11, 2019 email from Plaintiffs' counsel.

removal are being provided to the Court per instructions from the Clerk of the Court.³

DATED THIS 9th day of January, 2020.

FOLEY & MANSFIELD, PLLP

By:



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Attorneys for Defendant Kaiser Gypsum
Company, Inc.

³ An index of all the pleadings from the Multnomah County Circuit Court is included in the Hall Decl.

CERTIFICATE OF SERVICE

I, Laura McKeon, declare that I am employed by the law firm of Foley & Mansfield, PLLP, 999 Third Avenue, Suite 3760, Seattle, King County, Washington; that I am over 18 years of age and not a party to this action.

[X] **(By E-mail)** I caused the foregoing to be delivered via e-mail to firms and persons whose email addresses are listed next to the name of the party represented as listed below:

Counsel for Plaintiffs

Kelly Battley
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed this 9th day of January, 2020 in Seattle, Washington.



Laura McKeon, Legal Assistant